Supreme Court, U.S.
FILED
MAR 9 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 86-357

In the

Supreme Court of the United States

October Term, 1986

American Trucking Associations, Inc., et al., ... *Appellants*

V.

James I. Scheiner, Secretary of the Department of Revenue, et al., ... *Appellees*

ON APPEAL FROM THE SUPREME COURT OF PENNSYLVANIA

BRIEF OF THE STATE OF ARKANSAS, *AMICUS CURIAE*, IN SUPPORT OF APPELLEE

Of Counsel

Chris Parker
Thomas B. Keys
Ted Goodloe
P.O. Box 2261
Little Rock, Arkansas 72203

STEVE CLARK
Attorney General of Arkansas
Counsel of Record
201 E. Markham
Little Rock, Arkansas 72201
(501) 371-2007

INTEREST OF AMICUS CURIAE

In its brief on the merits the appellants present a two pronged attack on the challenged Pennsylvania taxes. The first, questioning what the Supreme Court of Pennsylvania found to be a rational restructuring of that state's motor vehicle special revenue taxes through passage of the "axle tax" (75 Pa. Cons. Stat. Ann. §9901 et. seq.) and a simultaneous reduction in some motor vehicle registration fees, obviously turns to a great extent on the particular tax payments and privileges secured under the Pennsylvania user fee package before and after the imposition of the axle tax. The reach of this kind of challenge is by its nature somewhat restricted to the parties. The second challenge is much broader: as the State of Arkansas understands the appellants' argument (appellants' brief at 28 - 49) it is asking this Court to declare *any* reliance upon a non-discriminatory "flat rate" fee as *any* part of a state's mix of special revenue highway user fees to be a violation of the Commerce Clause of the United States Constitution.

A decision on this ground would impact every State in the union and reverse a solid line of precedent upon which states have relied in funding their transportation improvements from at least 1935 through 1978. Moreover, the impact of this decision (or at least the articulation of its rationale) could directly and substantially impact the State of Arkansas in litigation currently pending before this Court.

In 1983 the Arkansas legislature raised the gross weight limit for motor vehicles traveling over the highways of the state from 73,280 pounds to 80,000 pounds. Act 7 of 1983, Ark. Stat. Ann. §75-817 (Supp. 1985). In that same session the legislature also passed a tax package, Act 685 of 1983, Ark. Stat. Ann. §§75-817.2, 75-817.3 (Supp. 1985) which applied to "all motor vehicles . . . having a declared gross weight of 73,281 pounds or more." Ark. Stat. Ann. §75-817.3 (a) (3). All revenues raised by Act 685 are legislatively

designated as special revenues to be exclusively used for road construction and repair by the State and its cities and counties. Ark. Stat. Ann. §75-817.3 (m). This non-discriminatory, special revenue "user fee" tax package is also being challenged by these appellants in *American Trucking Associations, Inc. v. Gray*, appeal pending No. 86-358 (U.S. September 3, 1986).

TABLE OF CONTENTS

Page

INTEREST OF AMICUS CURIAE i

TABLE OF AUTHORITIES iii

STATEMENT 1

ARGUMENT 6

I. A NONDISCRIMINATORY PARTIAL FLAT RATE TAX AS PART OF A STATES MIX OF HIGHWAY USER FEES DOES NOT VIOLATE THE COMMERCE CLAUSE 6

A. As A Practical Matter This Litigation Represents An Attempt By The Largest Truck Companies To Preserve Their Ability To Exploit Existing Tax Subsidies 6

B. The Appellant's Average Cost Per Mile Figures Are a Red Herring 10

C. A Facially Non-Discriminatory User Fee Is Valid Under *Capitol Greyhound v. Brice*, 339 U.S. 542 (1950) And *Massachusetts v. United States*, 435 U.S. 444 (1978) 13

D. No Showing Of Manifestly Disproportionate Amount 18

E. Retaliatory Taxes Are Unconstitutional And Can Be Struck Down On Their Own Merits 21

SUMMARY 21

APPENDIX A-1

TABLE OF AUTHORITIES

Cases: Page

Aero Mayflower Transit Co. v. Board of Railroad Comm'rs, 322 U.S. 495 (1947) 17

Aero Mayflower Transit Co. v. Georgia Public Serv. Comm's, 295 U.S. 285 (1935) 18

American Trucking Associations, Inc. v. Goldstein, 483 A.2d 47 (Md. 1984) 6

American Trucking Associations, Inc. v. Gray, 288 Ark. 488 (1986), Appeal Pending (U.S. Sept. 3, 1986) 6, 18

Armco, Inc. v. Hardesty, 467 U.S. 638 (1984) 12

Best & Co. v. Maxwell, 311 U.S. 454 (1940) 14

Boston Stock Exch. v. State Tax Comm'n, 429 U.S. 318 (1977) 11, 12

Capitol Greyhound Lines v. Brice, 339 U.S. 542 (1980) 14, 18

Clark v. Paul Gray, Inc., 306 U.S. 583 (1939) 18

Commonwealth Edison Co. v. Montana, 453 U.S. 609 (1981) 17

Complete Auto Transit, Inc. v. Brandy, 430 U.S. 274 (1977) 15

Evansville-Vanderburgh Airport Auth. Dist. v. Delta Airlines, Inc., 405 U.S. 707 (1972) 18

Exxon Corp. v. Governor of Maryland, 437 U.S. 117 (1980) 10

Great Atlantic and Pacific Tea Company v. Cottrell, 424 U.S. 366 (1976) 21

Lewis v. B.T. Inv. Managers, Inc., 447 U.S. 27 (1980) 9

Maryland v. Louisiana, 451 U.S. 725 (1981) 11, 12

Massachusetts v. United States, 435 U.S. 444 (1978) 16, 18

Nippert v. Richmond, 327 U.S. 416 (1946) 14

Northwestern States Portland Cement Co. v. Minnesota, 358 U.S. 450 (1959) 11

Robbins v. Shelby County Taxing Dist., 120 U.S. 489 (1887) 14

Sprout v. South Bend, 277 U.S. 163 (1928) 14

Westinghouse Electric Corp. v. Tully, 466 U.S. 388 (1984) 12

Constitution and Statutes:

United States Constitution, Commerce Clause i

Ark. Stat. Ann. (Supp. 1985):

§75-201(c) (7) 2

§75-809 3

§75-817 i

§75-817.2 ..... i, 4, 5

§75-817.3 ..... i, 4, 5

Ark. Stat. Ann. (Repl. 1979):

§75-131 3

§75-132 2

§75-250 3

§75-251 2

Pa. Cons. Stat. Ann. tit. 75 §9901 et seq. (Purdon Supp. 1986) i

Miscellaneous:

American Association of Motor Vehicle Administrators, Internation Registration Plan with Official Interpretations, (Rev.. 1981) 3, 4

R.L. Polk Company, Polk Motor Vehicle Registration Manual, (April, 1986) 7

United States Department of Labor, *Handbook of Labor Statistics 1975.* Reference Edition 19

United States Department of Labor, *Consumer Price Index U.S. City Average* 1975-1986 19

United States Department of Transportation, *Vol. 1. Main Text State Highway Cost Allocation Guide,* (October, 1984) 9

No. 86-357

In the Supreme Court of the United States

October Term, 1986

American Trucking Associations, Inc., et al., ... *Appellants*

V.

James I. Scheiner, Secretary of the Department of Revenue, et al., ... *Appellees*

ON APPEAL FROM THE SUPREME COURT OF PENNSYLVANIA

BRIEF OF THE STATE OF ARKANSAS, *AMICUS CURIAE*, IN SUPPORT OF APPELLEE

STATEMENT

The appellants in their brief at 34 - 35, n. 14, have specifically tied the second prong of their argument in *Scheiner* with their still pending suit in *ATA v. Gray*, No. 86-358, appeal pending (U.S. Sept. 3, 1986). This link has been echoed in the brief filed by Amici Curiae Yellow Freight System, Inc. et al., at 7 - 9 and 13, as well as the brief filed by the State of Oklahoma. Because in some respects the issues *are* similar and because the appellants have chosen to explicitly implicate the Arkansas tax package, some explanation of that package is required.

The thrust of the challenge in *ATA v. Gray, supra*, like the second argument in *Scheiner* is an allegation of a "discriminatory impact" of the Act 685 tax package be-

tween Arkansas registered motor vehicles and non-Arkansas registered motor vehicles. In order to assess this challenge (and see, in short, the artificiality of this dichotomy) the Court needs some basic facts concerning both modern truck registration laws and the way in which the challenged Arkansas tax package actually operates within the existing registration system. The Court also needs to understand, at the front end, that under the challenged Arkansas law *it makes absolutely no difference in either the options for payment available to a carrier or the tax liability of any individual tax payer whether a motor vehicle is base-plated in Arkansas or base-plated elsewhere.*

A. Truck Registration, Reciprocity, and the IRP:

Arkansas imposes a general statutory requirement that all motor vehicles be registered in this state in order to travel on its highways. Ark. Stat. Ann. §§75-809 (Supp. 1985), 75-131, 132 (Repl. 1979). Registration includes payment of a statutory fee based upon the type of vehicle, as well as its declared gross weight. Ark. Stat. Ann. §75-201 (Repl. 1979). Since 1945, however, Arkansas officials have been authorized to enter into reciprocal agreements with other states to authorize the travel of non-Arkansas "plated" vehicles. Ark. Stat. Ann. §§75-250, 251 (Repl. 1979).

These agreements fall into two types.

The older of these two kinds of agreements are known as "bilateral reciprocity agreements". The essence of such an agreement is that Arkansas agrees to allow, say, trucks base-plated in Rhode Island to travel in Arkansas without paying the Arkansas fee or securing an Arkansas plate, so long as Rhode Island accords reciprocal privileges to Arkansas base-plated vehicles. No money is exchanged. Arkansas currently has bilateral reciprocity with 15 states, primarily those in the Northeast.

All the remaining states, including all states contiguous with Arkansas, are, like Arkansas, members of the International Registration Plan. The IRP is an informal compact among its participating states, two provisions of which are important to an understanding of the issues here. First, registration fees are apportioned among member jurisdictions based upon the percentage of any carrier's miles generated in each state. [1] In other words, suppose a carrier will travel in Tennessee, Missouri and Arkansas. If he registers his vehicle in Tennessee (his "Base" state) he purchases a Tennessee IRP apportioned plate and declares on the appropriate form that he will travel for example, 25% of his miles in Arkansas, 25% in Tennessee, and 50% in Missouri. His license fee in Tennessee will be the sum of 25% of the statutory Tennessee fee, 25% of the Arkansas fee, and 50% of the Missouri fee. He pays this to Tennessee after which Tennessee then forwards the respective amounts to Arkansas and Missouri. The second critical provision of the IRP is related to this: where a motor vehicle is base-plated makes no difference in the amount any other state receives in registration fees; therefore, a carrier is allowed to base-plate in any IRP jurisdiction in which he has an office with a street address to which records can be

---

1

IRP § III A States: "A. The registration fee for apportionable vehicles shall be determined as follows: (1) Divide the In-jurisdiction miles by total miles generated during the preceding year. (2) Determine the total fees required under the laws of each jurisdiction for full registration of each vehicle at the regular annual or applicable fees, or for the unexpired portion of the registration year. (3) Multiply the sum obtained under Paragraph 2 of this section by the quotient obtained under Paragraph 1 of this section" International Registration Plan, with Official Interpretations, American Association of Motor Vehicle Administrators, (Rev. 1981), at 9. IRP manual introduced as PX. 6 in *Gray v. ATA*, No. 86-358, appeal pending (U.S. Sept. 3, 1986).

brought and in which he generates any mileage at all with any of his vehicles. [2]

B. Taxes Imposed Under Act 685 of 1983:

After the gross weight limit in Arkansas was raised from 73,280 pounds to 80,000, the legislature imposed two taxes on this new weight category. First, all of those vehicles which were previously required to pay a registration fee to Arkansas are required to calculate that fee for this new class of vehicles "at a maximum registration fee for 68,001 to 73,280 pounds, as provided in Subsection (7) of Subsection (c) of Section 24 . . . ". Ark. Stat. §75-817.2 (Supp. 1985). Second, the Act also imposes the Highway Use Equalization Tax of Ark. Stat. Ann. §75-817.3 (Supp. 1985), payable generally at $ .05 a mile up to a maximum payment of $175.00. The challenged HUE tax portion of the taxes levied by Act 685 of 1983, Ark. Stat. Ann. §75-817.3 (Supp. 1985), can be analyzed as a flat rate tax of $175.00 with a payment option for carriers traveling less than 3500 miles in

---

2

IRP §II (C) (1) states: "C. 1. 'Base Jurisdiction' means, for purposes of fleet registration, the jurisdiction where the registrant has an established place of business, where mileage is accrued by the fleet and where operational records of such fleet can be made available in accordance with the provisions of Article XIV,A(2) . . . Although 'an established place of business' is not defined, it is construed to mean . . . a physical structure owned, leased or rented by the fleet registrant the location which is designated by street number or road location, and which is open during normal business hours, and in which are located: 1) a telephone or telephones publicly listed in the name of the fleet registrant, 2) a person or persons conducting the fleet registrant's business, and, 3) the operational records of the fleet (unless such records can be made available in accordance with the provisions of Article XIV.A.2) A question has arisen whether all vehicles of a fleet must accrue miles with the jurisdiction chosen as 'base'. If this interpretation were adopted, the registrant would be forced to make certain that every vehicle of a fleet traveled some of its miles in the 'base' each year. This requirement would contravene the purpose of granting operational flexibility. The Plan is construed broadly to require only the accrual of miles by the fleet as a whole; each vehicle need not individually enter the base jurisdiction." Id., at 5.

Arkansas that provides them with a dollar and cents tax savings upon payment at a rate of a nickle a mile.

For analytical purposes, there are really three groupings of motor vehicles from which payment is exacted.

First, wholly intrastate Arkansas carriers with a declared gross weight of over 73,280 pay a flat registration fee of $1,044.00 (See, Ark. Stat. Ann. §75-201 (c) (7) (Repl. 1979)) plus a flat $175.00 HUE tax imposed by Ark. Stat. Ann. §75-817.3 (f) (2). Intrastate carriers do not have the five cent/mile option because they are not subject to apportioned registration under the International Registration Plan and hence do not report their mileage to anyone.

Second, motor vehicles base-registered in any IRP signatory state pay an apportioned registration fee to Arkansas through the International Registration Plan. As stated above the fees under this apportioned registration system are based not on actual miles, but on the percentage of miles traveled in this state. For example, a heavy motor vehicle traveling 10% of its miles in Arkansas will pay a registration fee of 10% of $1,044.00 or $104.40. In addition such a carrier will pay the HUE tax at a rate of five cents/mile to a maximum of $175.00 or purchase individual trip permits at a rate of $8.00/hundred miles. Ark. Stat. Ann. §75-817.3 (f), (i) (Supp. 1985).

Third, non-IRP registered vehicles secure authority to travel in Arkansas for registration fee purposes through "reciprocity". Such non-Arkansas, non-IRP base registered vehicles paid no registration fee in this state prior to the enactment of Act 685 and continue to pay none. See Ark. Stat. Ann. §75-817.2 and Ark. Stat. Ann. §75-817.3 (b) (Repl. 1985). They do however pay a HUE tax (if they declare through the qualification process a gross weight in Arkansas in excess of 73,280 pounds) of five cents/mile to a maximum of $175.00 or purchase individual trip permits at a rate of $8.00/hundred miles.

ARGUMENT

A NONDISCRIMINATORY PARTIAL FLAT RATE TAX AS PART OF A STATES MIX OF HIGHWAY USER FEES DOES NOT VIOLATE THE COMMERCE CLAUSE.

A. As A Practical Matter This Litigation Represents An Attempt By The Largest Truck Companies To Preserve Their Ability To Exploit Existing Tax Subsidies.

The trucking industry is only possible (and profitable) because of the enormous continuing public investment in highway construction and maintenance. Because of the "wear and tear" caused by their weights, the heavy haul truck is the predominate "consumer" of state road systems. For example, when Arkansas raised its weight limit from 73,280 pounds to 80,000 pounds the increased weight resulted in an *additional* $53,000,000.00 annually in repairs on Arkansas' Interstate and primary road system alone.[3] Any system of user fee taxation, then, will (and should) be a significant cost to the industry and the manner of allocating these fees will inevitably impact the industry's structure and development.

In attacking the *concept* of facially non-discriminatory flat rate fees, as *any* part of the permissible mix of user fee taxes, the appellants and their amicus supporters extol the traditional two-tier tax system of registration fees and motor fuel taxes. Yet the record in *American Trucking Associations, Inc. v. Gray*, appeal pending No. 83-358 (U.S. Sept. 3, 1986), demonstrates that this system, instead of being "tax neutral", has inevitably subsidized the growth of huge trucking firms at the expense of owner/operator and smaller competitors: operating "flexibility" can be

---

3 This was the damage figure relied upon by the Court in setting the proposed bond on the request for a preliminary injunction. See, *American Trucking Associations v. Gray*, 280 Ark. 258, 657 S.W.2d 207 (1983).

purchased cheaply and is then "tax subsidized" enough to pay for the enormous overhead of operating a Yellow Freight or a North American Van Lines.

First of all by adhering to the traditional two tiered system the appellants under cut their argument that their real concern is any "flat rate" fee. All states have a registration fee [4] and registration fees *are* flat rate taxes, even registration fees that are apportioned through the International Registration Plan. Because the resulting fee is determined by the percentage of miles in a given jurisdiction, not the actual miles, the fee is merely a flat rate tax with inherently limited potential as a revenue raiser. (The political disincentive of raising registration fees on paper, say $10.00 to get a $1.00 back in the State treasury is rather obvious).

Moreover, it is clear that in actual operation, the IRP apportioned licensed fee (discussed in the Statement) is a boon to the heavy interstate hauler with a low percentage or miles in any single state. Take, for example, four carriers, each hauling 5,000 miles in Arkansas. The first is a wholly intrastate carrier who pays $1,044.00 for his Arkansas "J" tag, or around 20 cents/mile. Ark. Stat. Ann. §75-201 (Repl. 1980). The second is licensed under the IRP and travels 5,000 miles in Arkansas and 5,000 in another state he pays $522 to Arkansas for his license, or 10 cents/mile. The third is a coast-to-coast IRP carrier who travels 50,000 miles a year, 5,000 of which is in Arkansas he pays only $104 for his license fee or 2 cents/mile. The fourth is a non-IRP licensee who is licensed in a state with a reciprocity agreement in Arkansas and he pays absolutely no license fee in this state.

An example of the heavy interstate hauler is the Transcon Lines Inc., a plaintiff/appellant in *ATA v. Gray*, No. 86-358, who because of sheer size is able to operate

---

4

Polk Motor Vehicle Registration Manual, CR.L. Polk Co. April (1986).

"pony express" style 24 hours a day from coast-to-coast. [5] Such a company can obviously churn out two or three times the miles (and therefore pay one half to one third of the registration fee per mile) of the hardest working owner/operator.

Second, sheer numbers of trucks, and the "operational flexibility" those numbers allow (discussed at length by the Amici Yellow Freight, et. al. in their brief at 4 - 6) means that the largest companies can travel more full, more of the time, than their smaller, less flexible competitors. There are obviously some *real* efficiencies in that, but there are also some *real* subsidies to it under the motor fuel tax. The record in *ATA v. Gray, supra* reflected a unanimous engineering judgment that motor vehicle wear and tear on the highways increases at an increasing rate as a motor vehicle's weight increases. [6] Yet motor fuel efficiency (a key determinant in the payment of any motor fuel tax) decreases at a decreasing rate as weight increases. The result is a subsidy of the highest weight vehicles by those which are lighter, a subsidy that will only increase with

---

5

"The Buffalo driver takes his rest while the Indianapolis driver takes the same power unit hooked to the same trailer to Kirland, Missouri where he would rest, the Kirkland driver takes it to Oklahoma City where he rests, and the Oklahoma City driver takes it to Tecumcari, New Mexico where he rests, the Tecumcari takes it to Winslow where he rests, the Winslow driver takes it to Barstow where he rests and then Barstow driver takes it to its ultimate destination, being Los Angeles." *Gray*, T. 1561.

6

Both the appellant's expert witness, Ralph Johnson and the appelee's witness, Assistant Chief Engineer Charles Venable concurred that this is the accepted significance among highway engineers of the empirical AASHTO road test.

increasing reliance on the motor fuel tax in a state's mix of highway user fees. [7]

The largest segments of the industry have grown larger under this system of subsidy. (See, discussion of the history of the industry at appellant's brief 43 - 45 and descriptions of Amici Yellow Freight, et. al., operations in their brief at 2 - 5). The existing tax subsidy pays the overhead and flexibility can be purchased cheap. The real challenge to the industry giants of including a *partial* flat rate fee (and both the Arkansas HUE tax and the Pennsylvania axle tax give a dollars and cents tax break to the casual user) as even *part* of the mix of user fees, is that for the first time since the inauguration of reciprocity and the IRP, buying that flexibility becomes a little more expensive and the largest companies may lose a little of their ability to exploit their otherwise, subsidized competitive edge.

This is the real fight involved in the litigation.

A nondiscriminatory flat rate tax, as long as it is not disproportionate in amount (see discussion below at p. 13, 14) should not be unconstitutional. Such taxes do not differentiate between segments of the industry based on place of origin. c.f., *Lewis v. B. T. Inv. Managers, Inc.*, 447 U.S. 27 (1980). To enshrine cheap "operational flexibility" as a constitutional imperative will merely secure in concrete (and asphalt) a relative competitive advantage the largest companies can exploit over the low overhead owner/operator. This kind of favoring of one segment of the

---

7

U.S. Dept. of Transportation, *Vol. 1, Main Text State Highway Cost Allocation Guide*, (October, 1984), at III-11: "Fuel tax contributions per vehicle mile increase with vehicle weight because fuel efficiency declines with weight, but these contributions increase much less rapidly than responsiblities. Therefore a single rate fuel charge, planned to match the lightest vehicle's responsibility, would not achieve the correct revenues for the heavier vehicles."

interstate market over another is certainly not required. In fact this Court has recently declared that it "could not accept . . . [the] underlying notion that the Commerce Clause protects the particular structure or methods of operation in a retail market." *Exxon Corp. v. Governor of Maryland*, 437 U.S. 117, 127 (1980).

B. The Appellant's Average Cost Per Mile Figures Are a Red Herring.

One indication that this litigation is not really about local/non-local discrimination is that the appellants' evidentiary centerpiece of an *average* cost-per-mile discrepancy between locally base-registered and non-locally base-registered carriers under non-discriminatory flat rate taxes is truly an artificial dichotomy, a red herring. It simply is not true, as the appellant's assert in their brief (at 48) that the evidence of their statistical survey shows that flat highway taxes work to favor intrastate over interstate commerce and in-state over out of state trucks.

This is clearly not a fight between interstate and intrastate commerce. As Arkansas noted in its response to the Jurisdictional statement almost *all* trucks today travel in interstate commerce: of the 156 carriers noted by the appellants as being "Arkansas based" trucks, at least 138 were *also* interstate carriers. [8]

In fact, most of the vehicles on both surveys in *ATA v. Gray* and presumably in *ATA v. Scheiner*, are base-registered on an apportioned basis under the International Registration Plan. The significance of this is that, under the liberal licensing criteria of IRP "base jurisdiction", where a vehicle is licensed is no real indicator of whether he is domestic or non-domestic for purposes of establishing parochial discrimination under the Interstate Commerce Clause. Many, if not most, IRP carriers operate in a

8
Gray, T. 1995.

multiplicity of jurisdictions and can and do conveniently register in several of them. Individual trucks may be base-plated in a state in which they never even travel. See, note 2.

The record in *ATA v. Gray, supra*, is full of examples of how fluid the situation is. For example, Mr. Paul Martinson testified that the Plaintiff, Diamond Transportation system, Inc., is a Wisconsin Corporation with headquarters in Racine, Wisconsin, but licenses its vehicles in Oklahoma. Many carriers license some vehicles in Arkansas and some elsewhere, thus appearing on both lists. Even Arkansas Best Freight licenses its vehicles in Illilnois. [9] Doug Hughes, the ATA official who coordinated the survey information, admitted that his lists ignore corporate citizenship and the probably more important indicator of "home office" domicile. The result, he said, is "Arkansas" companies which license in other states show up on the "foreign" list and foreign companies that license in Arkansas show up as Arkansas registrants. [10]

The law is clear that " . . . [o]ne of the fundamental principles of Commerce Clause jurisprudence is that no State consistent with the Commerce Clause, may 'impose a tax which discriminates against interstate commerce . . . by providing a direct commercial advantage to local business.' *Northwestern States Portland Cement Co. v. Minnesota*, 358 U.S. 450, 458 (1959). See *Boston Stock Exchange v. State Tax Commission*, 429 U.S. 318, 329 (1977)." *Maryland v. Louisiana*, 451 U.S. 725, 755 (1981). But the record in these cases is clear that IRP registered interstate carriers may not be "local" (in that sense) anywhere. At the very least, the place where they base register has very little necessary connection with where that "locality" may be.

9
Gray, PX 45-46.

10
Gray, T. 439.

Moreover, whether a particular carrier is Arkansas base-registered or non-Arkansas base-registered *makes absolutely no difference in the amount of HUE tax he will ever pay.* This is uncontested by the appellants and is a hallmark of any facially non-discriminatory flat rate tax. Unlike the decision of where to locate a manufacturing plant in view of the West Virginia gross receipts tax credit [*Armco v. Hardesty*, 467 U.S. 638 (1984)], or where to ship exported goods under the New York franchise tax credit [*Westinghouse Electric Corp. v. Tully*, 466 U.S. 388 (1984)], or where to trade stock in view of the New York State transfer tax [*Boston Stock Exchange v. State Tax Commission*, 429 U.S. 318 (1977)], the decision of where to base-register a motor vehicle in view of the Arkansas or Pennsylvania tax scheme remains "tax neutral." Thus, in terms of those traditional commerce clause concepts guaranteeing "an area of free trade among the several states . . . " *Westinghouse Electric Corp. v. Tully*, 466 U.S. 388, 402 (1984), the statistical claims propounded through the appellant's survey data are essentially irrelevant.

What the ATA survey purports to show is something about the motor carriers' "actual operating costs." An additional problem with the appellant's survey results, however, is that by isolating only the Arkansas HUE or Pennsylvania marker fee portion of the taxes borne by heavy trucks, the survey is simply not probative of anything under an "actuality of operation" test. As this Court recently stated: "A state tax must be assessed in light of its actual effect considered in conjunction with other provisions of a State's tax scheme. 'In each case it is our duty to determine whether the statute under attack, whatever its name may be, will in its practical operation work discrimination against interstate commerce.' [Citations omitted]" *Maryland v. Louisiana*, 451 U.S. 725, 756 (1981). This need to look further than at a single tax is particularly pressing when the challenged Act itself (as in Arkansas' Act 685 of 1983) levied both the HUE tax and a registration fee on all motor vehicles with a declared gross

weight in excess of 73,280 pounds. Ark. Stat. Ann. §§75-817.2, 75-817.3 (Supp. 1985).

An auditor for the Arkansas Highway Department calculated the registration fee per mile for both Arkansas-based and non-Arkansas-based carriers appearing on the surveys introduced in *Gray* chosen at random. She found a spread of between .84 to 19.88 cents per mile for the Arkansas base-registered carriers and between .55 to 1.8 cents per mile for the non-Arkansas base-registered trucks. Again, the survey data submitted by the appellants tells nothing about the total tax burden borne by the surveyed carriers and evidence in the record established that, without this information, the survey cannot be probative of the "actuality of operation."

The appellants have responded to this attack on their survey results by treating it as an improper application of the compensatory tax doctrine. (appellants' brief at 22-24). Yet this change neatly misses the point: it is a *given* in analyzing a mix of legislatively designated special revenue "user" fees that the whole mix is payment for the privilege of "consuming" a state's road system. This consumption will vary based on both *actual miles and actual weight* of the vehicle. Anything less sophisticated than a survey showing total actual costs in relation to actual weight and mileage (with the additional knowledge that road "wear and tear" goes up at an increasing rate as weight increases) will not be probative in assessing the "actuality of operation." The difficulty in presenting this kind of proof is why the traditional standards of special revenue taxation have allowed the collection mix to rest on a wide variety of bases, so long as the amount charged is not disproportionate to the privilege granted.

C. A Facially Non-Discriminatory User Fee Is Valid Under Capitol Greyhound v. Brice, 339, U.S. 542 (1950) And Massachusetts v. United States, 435 U.S. 444 (1978).

The appellants admit that the Pennsylvania axle tax and the old marker fee were facially neutral. But, in their attempt to develop a substantial constitutional question, they skirt the essential correlary: It makes absolutely no difference in the actual tax liability of any individual carrier what base-plating may have been chosen.

It is of course recognized that any flat rate vehicle tax will inevitably result in different payments per mile based upon the number of miles traveled in the taxing jurisdiction. This will be true even under a tax like that challenged here in which this result is ameliorated somewhat by the refund procedure. Although tangential reference is made in the appellant's brief to numerous contemporary commerce clause cases, the sole line of doctrinal support that this feature renders a flat rate tax unconstitutional is found in this Court's handling of the "drummer cases" culminating in *Nippert v. Richmond*, 327 U.S. 416 (1946); see also *Robbins v. Shelby County Taxing District*, 120 U.S. 489 (1887); *Best and Company v. Maxwell*, 311 U.S. 454 (1940).

Yet in citing this line of authority [and identifying with it the bus tax overturned in *Sprout v. South Bend*, 277 U.S. 163 (1928)], the appellants confront a salient distinguishing feature: facially neutral taxes that are special, not general, revenue levies have long been upheld, even when they are completely flat rate fees.

The theoretical foundation for such legitimacy is that the tax is not levied on actual use of the roads, but upon the privilege of making such use. "The fee is for the privilege for a use as extensive as the carrier wills that it shall be. There is nothing unreasonable or oppressive in a burden so imposed . . . One who receives a privilege without limit is not wronged by his own refusal to enjoy it as freely as he might." *Aero Mayflower Transit Co. v. Georgia Public Service Commission*, 295 U.S. 285, 289 (1935).

In the case of *Capitol Greyhound Lines v. Brice*, 339 U.S. 542 (1950) decided four years after *Nippert*, *supra*, the

Court was unanimous in its support of non-mileage based motor vehicle taxes. Following a lengthy review, the majority declared "it is clearly within the discretion of the State to determine whether the compensation for the use of its highways by automobiles shall be determined by way of a fee, payable annually, or by a toll based on mileage or otherwise". 339 U.S. 542, at 544-545. Even in the dissent (which revolved around the incidence of the tax being on a vehicle's purchase rather than a right to use the roads) Justice Frankfurter favorably reviewed the relevant case law:

> Again, if the State makes clear by disposition of the tax proceeds or by statutory declaration that the tax is levied to secure compensation for road use, the tax classification will be sustained if it may fairly be attributed to the privilege of road use, as distinguished from actual use. Compare *Interstate Transit, Inc. v. Lindsey*, 283 U.S. 183 (no allocation of proceeds) with *Clark v. Poor*, 724 U.S. 554 (allocation); see Appendix, post, p. 561. Thus, mileage may be ignored and an annual tax may be based on horespower, *Hendrick v. Maryland*, 235 U.S. 160; on carrying capacity, *Clark v. Poor*, 274 U.S. 554, and *Hicklin v. Coney*, 290 U.S. 169; and on manufacturer's rated capacity, *Dixie Ohio Express Co. v. State Revenue Comm'n*, 306 U.S. 72. And the Court has upheld flat fees imposed without regard to size or weight factors, *Aero Mayflower Transit Co. v. Georgia Public Service Comm'n*, 295 U.S. 285; *Morf v. Bingaman*, 298 U.S. 407; *Clark v. Paul Gray, Inc.*, 306 U.S. 583; *Aero Mayflower Transit Co. v. Board of Railroad Comm'rs*, 332 U.S. 495.

339 U.S. at 551.

The Appellants now insist that this whole body of case law has been rendered moot sub silentio by the Court in *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1977). Of course, there is no inconsistency between the result in the *Capitol Greyhound, supra*, line of cases and the fourth prong of the *Brady* test when the "services provided by the

State" are viewed as the opportunity to haul an unlimited number of miles. In any case, the Supreme Court has specifically reaffirmed the validity of these cases in a post-Brady decision. In *Massachusetts v. United States*, 435 U.S. 444 (1978) the Court validated a flat-rate federal airport tax by analogy to the "accepted" status of flat rate motor vehicle taxes:

> Having established that taxes that operate as user fees may constitutionally be applied to the States, we turn to consider the Commonwealth's argument that §4491 should not be treated as a user fee because the amount of the tax is a flat annual fee and hence is not directly related to the degree of use of the airways. This argument has been confronted and rejected in analogous contexts. *Capitol Greyhound Lines v. Brice*, 339 U.S. 542, 70 S.Ct. 806, 94 L.Ed. 1053 (1950), is illustrative. There the Court rejected an attack under the Commerce Clause on an annual Maryland highway tax of "2% upon the fair market value of motor vehicles used in interstate Commerce." The carrier argued that the correlation between the tax and use was not sufficiently precise to sustain the tax as a valid user charge. Noting that the tax "should be judged by the result, not its formula, and must stand unless proven to be unreasonable in amount for the privilege granted," id., at 545, 70 S.Ct., at 808, the Court rejected the carrier's argument:
>
> Complete fairness would require that a state tax formula vary with every factor affecting appropriate compensation for road use. These factors, like those relevant in considering the constitutionality of other state taxes, are so countless that we must be content with 'rough approximation rather than precision.' . . . Each additional factor adds to administrative burdens of enforcement, which fall alike on taxpayers and government. We have recognized that such burdens may be sufficient to justify states in ignoring even such a key factor as mileage, although the result may be a tax which on its face appears to bear with unequal

> weight upon different carriers . . . Upon this type of reasoning rests our general rule that taxes like that of Maryland here are valid unless the amount is shown to be in excess of fair compensation for the privilege of using state roads." Id. at 546-547, 70 S.Ct., at 809 [Citations and footnotes omitted.]
>
> See also, *Aero Mayflower Transit Co. v. Board of Railroad Comm'rs.*, 332 U.S. 495, 68 S.Ct. 167, 92 L.Ed. 99 (1947).

430 U.S. 444, 463 (1978).

Commonwealth Edison Co. v. Montana, 453 U.S. 609 (1981), cited by the appellant, does contain dicta that any proportional tax meets the fourth prong of the Complete Auto test. Even this dicta however does not purport to reach as far as its converse, i.e. that no flat rate tax ever can meet this test. In any event, *Commonwealth Edison, supra*, explicitly limits the application of its analysis of the fourth prong of Complete Auto to general revenue taxes:

> The Montana Supreme Court held that the coal severance tax is "imposed for the general support of the government" 615 P.2d, at 856, and we have no reason to question his characterization of the Montana tax as a general revenue tax. Consequently, in reviewing appellant's contentions, we put to one side those cases in which the Court reviewed challenges to "user" fees or "taxes" that were designed and defended as a specific charge imposed by the State for the use of state-owned or state-provided transportation or other facilities and services.

Commonwealth Edison Co. v. Montana, 453 U.S. 609, 621 (1981).

The appellants press for review of this settled doctrine claiming a large volume of Commerce Clause litigation and inconsistent judicial decisions. The truth is that the only three State Supreme Courts have been confronted with the

validity of facially non-discriminatory motor vehicle special revenue "user" taxes in which this sort of inherent disparity in cost per mile played a part in the analysis of the flat rate aspect of the challenged tax: the Maryland registration fee, Md. Transp. Code Ann §13-423(a) (1984); the Arkansas Highway Use Equalization Tax, Ark. Stat. Ann. §75-817.3 (Supp. 1985); and the Pennsylvania marker fee and axle tax, Pa. Cons. Stat. Ann. tit. 75 §§2102 (Purdon 1981) and 9901 et. seq. (Purdon Supp. 1986). In all three instances the courts upheld the tax relying upon that clear line of authority emanating from this Court in *Aero Mayflower Co. v. Georgia Public Ser. Comm'n*, 295 U.S. 285 (1935) through *Aero Mayflower Transit Co. v. Board of Railroad Comm'rs.*, 332 U.S. 495 (1947) and *Capitol Greyhound Lines v. Brice*, 339 U.S. 542 (1950) culminating in *Evansville-Vanderburgh Airport Auth. Dist. v. Delta Airlines, Inc.*, 405 U.S. 707 (1972), and *Massachusetts v. United States*, 435 U.S. 444 (1978). See, *American Trucking Associations Inc. v. Goldstein*, 483 A.2d 47 (Md. 1984); *American Trucking Associations Inc., v. Gray*, 288 Ark. 488, 707 S.W.2d 259 (1986); *American Trucking Associations, Inc. v. Scheiner*, 509 A.2d 838 (Pa. 1986).

D. No Showing Of Manifestly Disproportionate Amount.

Throughout this litigation, as well as in *ATA v. Gray*, No. 86-358, the appellants have not even attempted to meet the established test for challenging state imposed highway user fees. Such levies have been upheld "unless the amount is shown to be in excess of fair compensation for the privilege of using state roads". *Capitol Greyhound Lines v. Brice*, 339 U.S. 542, 546-547 (1950), cited in *Massachusetts v. United States*, 430 U.S. 444, 463 (1978) [emphasis added]. Moreover, the burden of asserting the requisite "manifest disproportion" clearly rests on anyone challenging the validity of the tax. *Clark v. Paul Gray, Inc.*, 306 U.S. 583 (1939; *Capitol Greyhound Lines v. Brice*, 339 U.S. 542, 548 (1950).

For example no taxpayer is assessed more than $175.00 under the Arkansas HUE tax [Ark. Stat. Ann. §75-817.2 (Suppl. 1985)] and since this kind of challenge is really mounted on behalf of the mileage option payees, the actual dollars and cents charge being questioned is below that "high dollar" figure. Yet even $175.00 is well within the constant dollar amount of fees previously held valid by the Court. For example, the twenty five "1935 dollars" approved in *Aero Mayflower Transit Co. v. Georgia Public Service Commission*, 295 U.S. 285 (1935) equates with $186.03 in 1983 dollars; [11] yet in 1935 the Georgia truck weight limit was only 12,500 pounds [12] compared to Arkansas' current 80,000 pounds. In short, the approved fee in 1935 was for more money and substantially less privilege. Similarly, in 1950 the Capitol Greyhounds Company challenged Maryland's levies of $505.17, $580.00, and $732.55 [13]; an equivalent 1983 flat rate charge would have been $2,090.00, $2,400.00, and $3,542.00, [14] respectively.

Still, the record in *ATA v. Gray, supra*, does reflect that the plaintiff/appellants may not have attempted to show "excessive" charges because they knew such proof could not be found.

Leroy Mallory, Director of Transportation for Tyler Pipe Industries (one of the name-plaintiff/appellants in this litigation) testified that the actual cost of operating one of his vehicles was $1.00/mile. [15] This is the only cost data in

---

11

The Consumer Price Index (1967 = 100) was 40.1 in 1935 and 298.4 in 1983. U.S. Dept. of Labor, Handbook of Labor Statistics 1975 - Reference Edition and Consumer Price Index U.S. City Average 1975 - 1986.

12

Ga. L., 1931. (Ex. Sess.) p. 114.

13

Capitol Greyhound Lines v. Brice, 339 U.S. 542, 546 (1950).

14

The Consumer Price Index in 1950 was 72.1; in 1983 the CPI was 298.4.

15

Gray T. 1508.

the record. In 1983 the Arkansas legislature raised its gross weight limit from 73,280 pounds to 80,000 pounds, which allowed truck carrying capacity to increase by 6500 pounds or some 14-16%. This percentage is computed by comparing the increase with the previous freight capacity of 43,000 pounds. [16] Since the HUE tax was imposed to pay for this increased weight limit, an (at most) 5% increase in costs/mile (assuming the nickle a mile option, the highest cost/mile paid by anyone) can not be considered excessive for a 14-16% increase in load capacity.

This favorable individual carrier cost/benefit analysis carries through on an industry wide basis.

Ralph Johnson, a transportation engineer and consultant who was called as a witness by the appellants themselves, had prepared a study, finding that in 1982 the industry benefit from an increase in allowable gross weight from 73,280 pounds to 80,000 in Arkansas would have amounted to over $115 million a year. [17] Charles Venable, an engineer for the State, testified that the increased weight would result in an additional $53 million in needed repairs annually on Arkansas' interstate and primary system alone. [This was the damage figure relied upon by the trial court in setting the proposed bond on the request for a preliminary injunction. See, *American Trucking Association Inc. v. Gray*, 280 Ark. 258, 657 S.W.2d 207 (1983)]. The Highway Use Equalization Tax is designed to raise a little over $20 million a year. Thus, on an industry wide basis the funds to

---

16

Empty five axle vehicles weigh 28,000-31,000 pounds. Therefore, under the pre-1983 Arkansas weight limit of 73,280 pounds, freight capacity would have been around 43,000 pounds. *Gray*, T. 2308.

17

The actual reported savings was $115.8 million annually. DX.2. "Costs and Savings Associated with Changes In Weight Limits on Arkansas' Highways", Counseltrans Inc., (Rockville, Md. Oct. 1982) at 8. Ralph Johnson called by the appellants was author of the report and president of Counseltrans, Inc.

be raised are not disproportionate to either the private benefits secured or the public costs incurred.

The structure and amount of the Pennsylvania axle tax is not so dissimilar that this evidence would not be equally probative here.

E. Retaliatory Taxes Are Unconstitutional And Can Be Struck Down On Their Own Merits.

One side issue remains.

Part of the appellant's "cumulative burden" argument is that taxes like the Pennsylvania axle tax and the Arkansas HUE tax, though facially neutral themselves, have engendered the imposition of discriminatory "retaliatory taxes." An example of such taxation is that imposed by the State of Oklahoma. (See its Amicus Brief in support of the appellant.) Of course one hallmark of "mirror" retaliatory taxation is that it is facially discriminatory. If the industry really wants to cure this "unseemly economic conflict", it should do so with a direct attack on the retaliatory taxes themselves, something the apellants have avoided. The industry in fact promotes the threat of mirror retaliation as a legislative weapon to keep non-discriminatory "third" structure taxes from being imposed in other states. This Court has had little difficulty in dismissing State's attempts to use such unconstitutional means under a guise of pursuing "free trade" ends. *Great Atlantic and Pacific Tea Company v. Cottrell*, 424 U.S. 366, 379 (1976).

SUMMARY

This Court should hold that States can continue to use a partial flat rate tax as part of its mix of highway user fees.

Respectfully submitted,

Respectfully submitted,

Of Counsel

Chris Parker
Thomas B. Keys
Ted Goodloe
P.O. Box 2261
Little Rock, Arkansas 72203

STEVE CLARK
Attorney General of Arkansas
Counsel of Record
201 E. Markham
Little Rock, Arkansas 72201
(501) 371-2007

APPENDIX

ARK. STAT. ANN.

75-131. Registration and certificate of title required.—It shall be a misdemeanor for any person to drive or move or for an owner knowingly to permit to be driven or moved upon any highway any vehicle of a type required to be registered hereunder which is not registered or for which a certificate of title has not been issued or applied for or for which the appropriate fee has not been paid when and as required hereunder, except that when application accompanied by proper fee has been made for registration and certificate of title for a vehicle it may be operated temporarily pending complete registration upon displaying a duplicate application duly verified or other evidence of such application or otherwise under rules and regulations promulgated by the commissioner.

75-250. Commission to make reciprocal agreements relating to operation of motor vehicles—Members.—An ex-officio Commission, composed of the Commissioner of Revenues, who shall serve as Chairman, the Director of Highways and the Chairman of the Public Service Commission [Arkansas Transportation Commission], is hereby established for the purpose of representing the State of Arkansas in the matter of making reciprocal agreements relating to the operation of motor vehicles.

75-251. Reciprocal agreements as to allocation and apportionment of registration pursuant to formula—Safety rules unaffected.—The Commission is hereby authorized to negotiate and consummate reciprocal agreements with the duly authorized officials or representatives of any state or the several states of the United States, whereby residents of such other state or states who operate commercial motor vehicles may allocate and apportion the registration of such commercial motor vehicles in accordance with any formula mutually agreed upon between the Commission and the

representatives or officials of such state or states. Provided, residents of this State are granted the same allocation and apportionment privileges for commercial motor vehicles' registration in such other state or states. Also provided, that nothing in this Act shall be construed as relieving any motor vehicle owner or operator from complying with all laws, rules and regulations pertaining to safety of operation of motor vehicles and the highway maximum weight standards and the preservation of the highways of this State.

75-809. Registration of vehicles—Weight limitation—Brakes—Display of registered gross weight—Operation with excess weight unlawful—Federal use tax payments.—(a) The commissioner, upon registering any vehicle under the laws of this state which vehicle is designed and used primarily for the transportation of property or for the transportation of 10 or more persons, may require such information and may make such investigation or test as necessary to enable him to determine whether such vehicle may safely be operated upon the highways in compliance with all the provisions of this Act. He shall register every such vehicle for a permissible gross weight not exceeding the limitation set forth in this Act. Every such vehicle shall be equipped with brakes as required in Section 124 [§75-724] of this Act.

(b) The Commissioner shall insert in the registration card issued for every such vehicle the gross weight for which it is registered, and if it is a motor vehicle to be used for propelling other vehicles he shall separately insert the total permissible gross weight of such motor vehicle and other vehicles to be propelled by it. He may also issue a special plate with such gross weight or weights stated thereon, which shall be attached to the vehicle and displayed thereon at all times. It shall be unlawful for any person to operate any vehicle or combination of vehicles of a gross weight in excess of that for which registered by the Commissioner or in excess of the limitations set forth in this Act. Further, the Commissioner shall implement rules and

regulations issued by the United States Secretary of Transportation pertaining to federal use tax payments.

75-817. Single and tandem axle load limit . . .

(d) Subject to the limit upon the weight imposed upon the highway through any one (1) axle as set forth in subsections (a), (b) and (c) of this Section, no vehicle, or combination of vehicles, shall be operated upon the highways of this state when the gross weight is in excess of eighty thousand (80,000) pounds. Provided, that the foregoing maximum gross weights shall be applicable to vehicles, or combinations of vehicles, operated on highways in this state that are a part of the federal interstate highway system or that have been designated by the State Highway Commission as primary highways, and on all other highways in this state the maximum gross weight of any vehicles or combinations thereof shall not exceed sixty-four thousand (64,000) pounds. Provided, further, that vehicles, or any combination of vehicles, of a gross weight in excess of sixty-four thousand (64,000) pounds and not in excess of seventy-three thousand two hundred and eighty (73,280) pounds may operate upon the secondary highways of the State at a speed not in excess of forty (40) miles per hour. Vehicles, or any combination of vehicles, of a gross weight in excess of seventy-three thousand two hundred and eighty (73,280) pounds and not in excess of eighty thousand (80,000) pounds operating on the secondary highways of the state shall also be limited to a maximum speed of forty (40) miles per hour. Provided, that greater gross weights than permitted may be authorized by special permit issued by competent authority as authorized by law or lesser gross weights will be required when highways are posted.

75-817.2 Compliance with highway use equalization tax law prerequisite to operation with weight up to 80,000 pounds.

Any motor vehicle registered in Arkansas at the maximum registration fee for 68,001 to 73,280 pounds, as

provided in Subsection (7) of Subsection (C) of Section 24 [§ 75-201] of Act 65 of 1929, as amended, or any motor vehicle registered in any other state to carry in excess of 73,280 pounds, shall be authorized to operate in this State with a gross weight of up to 80,000 pounds, in accordance with Act 7 of 1983 [§§ 75-809, 75-814, 75-816—75-817], provided said vehicle complies with the appropriate Subsections of the following Section 2 [§ 75-817.3] of this Act, the Highway Use Equalization Tax Law.

75-817.3. Highway use equalization tax.

(a) As used in this Section of this Act, the following terms shall have the following meanings:

(1) "Department" means the Director of the Arkansas State Highway and Transportation Department;

(2) "Division" means the Commissioner of Revenues, Department of Finance and Administration, State of Arkansas;

(3) "Motor Vehicle", as used herein, means all cargo vehicles required to be registered for use upon the public highways of this State, designed, used or maintained primarily for the transportation of property and having a declared gross weight of 73,281 pounds or more. For the purpose hereof, truck-tractors, single unit trucks, semi-trailers and trailers operated in combination thereof shall constitute a single vehicle. The person having the use or control, or the right to the use or control of the part of such a vehicle furnishing the motive power is the highway user with respect to the entire vehicle and is accordingly subject as such to the provisions of this Section of this Act;

(3) [(4)] "Truck" includes the terms "truck" or "truck-tractor" and "semi-trailer" or "trailer" when operated in combination with a truck or truck-tractor;

(4) [(5)] "User" includes any person having the use and control or the right to the use and control, of any motor vehicle;

(5) [(6)] "Highway" includes all highways, roads, and streets of this State generally open to the use of the public as a way for vehicular traffic;

(6) [(7)] "Gross weight" means the actual weight of the truck or truck-tractor, plus the actual weight of the heaviest semi-trailer or trailer or combinations thereof with which it is to be operated in combination plus the actual weight of the heaviest load to be carried thereon.

(7) [(8)] "Arkansas Registered Vehicle" or "Arkansas Registered Truck" means a vehicle registered in Arkansas by a user who is an Arkansas resident, and bearing an Arkansas license plate.

(b) A tax is hereby imposed upon all users, as defined in Subsection (a), above, of motor vehicles, as herein defined, in compensation for the use of the highways of this State to be known as the "Highway Use Equalization Tax". Such tax shall be in addition to all other taxes now required to be paid on such vehicles except as hereinafter provided.

(c) The Highway Use Equalization Tax shall not apply to any motor vehicle whose declared gross weight, as defined in Subsection (a), above, is 73,280 pounds or less; nor to vehicles used exclusively in hauling unfinished and unprocessed farm products, forest products, clay minerals or ores, from the point of production, harvesting or severance to the point at which the same shall first undergo any processing, preparation for processing, conversion or transformation from their raw, natural or severed state; nor to vehicles used exclusively for hauling animal feed by owners of livestock or poultry for consumption by livestock or poultry owned by them; nor to any vehicle owned and operated by the United States of America or the State of Arkansas, or any political subdivision thereof.

(d) The provisions of this Section of this Act shall not apply to any motor vehicle used on an interstate trip with an origin or destination within 10 miles of the geographic boundaries of this State, provided the one-way travel distance in the State is not over 10 miles.

(e) (1) The user of every vehicle subject to this Section of this Act and which is an Arkansas registered vehicle, before operating such vehicle over the highways of this State, shall qualify such vehicle with the Division. Qualifications shall be made by application to the Division on forms to be provided by said Division. Said application may be filed with the Division at the time of registration of the vehicle.

(2) Such application shall be accompanied by payment to the Division of a fee of five dollars ($5.00), to be deposited into the Constitutional and Fiscal Agencies Fund, which shall cover the clerical cost of such qualification. Upon receipt of such application and payment of the tax as hereinafter determined, the Division shall make appropriate record of the vehicle qualified and certify such qualification on the applicant's registration certificate or a registration cab card, one of which is to be carried in the cab of the vehicle at all times. The said registration certificate or registration cab card shall, in addition to the registration information and the required certification, show the amount of tax paid for such vehicle as determined by Subsection (f) of this Section.

(f) (1) At the time of such qualification of any Arkansas registered truck subject to this Section which is registered through the International Registration Plan, the Division may fix a mileage rate in cents per mile for each truck so registered and qualified. The Division shall determine the mileage rate, utilizing the gross weight declared in the application for registration of the truck, according to the following table:

Vehicle Weight (pounds)	Mileage Rate (dollars)
73,281 – 80,000	$ .05

The tax determined under this provision for every truck subject thereto shall be in the amount of the determined mileage rate multiplied by each mile such truck is operated over the highways of this State, as reported to the Division for registration under the International Registration Plan.

(2) At the time of such qualification of any Arkansas registered truck subject to the provisions of this Section, every user not registered through the International Registration Plan shall pay, and every user registered through the International Registration Plan may elect to pay, an annual mileage tax in lieu of an amount determined by the applicable mileage rate set forth by Subsection (f) (1) of this Section. The Division shall determine such annual mileage tax by utilizing the gross weight declared in the application for registration of the truck, according to the following table:

Vehicle Weight (pounds)	Mileage Rate (dollars)
73,281 – 80,000	$175

(g) The tax, as determined by either Subsection (f) (1) or Subsection (f) (2) of this Section, shall become due and payable at the time of registration. No license shall be issued, nor operation authority granted, to any Arkansas registered user subject to the provisions of this Act until such time as the full amount of the tax determined to be due under the provisions of this Section, together with all penalties, shall have been paid.

(h) The Division is hereby authorized to collect those taxes and fees imposed by this Section upon the Arkansas registered users subject to the provisions of this Act [§§ 75-817.2, 75-817.3, 75-819(b)], to make timely deposits into the State Treasury of all such moneys collected by the

Division, and to administer the provisions of this Section as they pertain to Arkansas registered users, including the right to inspect and audit at reasonable times at any place within this State the books, records and documents of any Arkansas registered users required to pay the Highway Use Equalization Tax hereby imposed.

(i) (1) The user of any vehicle, subject to the provisions of this Section, may, in lieu of qualification in accordance with the provisions of Subsection (e) of this Section, remit to the Department either an annual mileage tax in an amount determined by Subsection (f) (2) of this Section, or pay an amount determined by the applicable mileage rate set forth in (f) (1) of this Section, or pay a trip permit fee. It is the intent of this Act that all users, subject to the provisions of this Section, must either qualify with the Division as provided in Subsection (e) of this Section and pay the appropriate taxes, or comply with the provisions of this Subsection. Provided, that, all Arkansas registered vehicles must qualify with the Division and remit such taxes to the Division. If the user elects to pay the annual mileage tax, the Department, upon application thereof and receipt of such payment, shall issue an annual mileage tax certificate to the user which shall, by the user, be affixed to the cab of such vehicle. If the user elects to pay an amount determined by the applicable mileage rate set forth in (f) (1) of this Section, the Department shall utilize the appropriate rate multiplied by each mile such vehicle was operated over the highways of this State for the preceding twelve month period based on mileage records of the user acceptable to the Department. Upon payment of such amount, the Department shall issue a certificate to the user, which shall, by the user, be affixed to the cab of such vehicles. If the user elects to utilize a trip permit, such trip permits for trucks with a gross weight of 73,281 pounds through 80,000 pounds shall be issued at a fee of eight dollars ($8.00) for each 100 miles of travel, rounded to the nearest 100 miles, whether loaded or unloaded. Said permits shall be issued by the Department in such forms as it deems appropriate.

(j) The tax provided for in this Section of this Act must be paid by the users of all applicable vehicles using the highways of this State, and no reciprocal agreement or agreement of any nature heretofore or hereafter entered into between officials of this State and those of any other State may exempt any user of such vehicles using the highways of this State from the provisions of this Section of this Act and payment of the tax levied by this Section of this Act.

(k) Any user found operating any vehicle subject to the provisions of this Section of this Act over the highways of this State without complying with this Section or without having available in or on the cab thereof the appropriate certificate or trip permit required by this Section, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of no less than two hundred dollars ($200.00) and not more than five hundred dollars ($500.00) for the first offense and of no less than five hundred dollars ($500.00) and not more than one thousand dollars ($1,000.00) for each subsequent offense.

(l) This Section of this Act shall be liberally construed to effectuate the purposes thereof.

(m) All fees, taxes, penalties and interest collected under the provisions of this Section of this Act not specifically classified as "Constitutional and Fiscal Agencies Funds" shall be classified as "special revenues" and shall be deposited in the State Treasury, and the net amount thereof shall be transferred by the State Treasurer on the last business day of each month: 15% of the amount thereof, to the County Aid Fund; 15% of the amount thereof, to the Municipal Aid Fund; and 70% of the amount thereof, to the State Highway Department Fund, such funds to be further disbursed in the same manner and used for the same purposes as is set out in the "Arkansas Highway Revenue Distribution Law."